IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 18421 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SARVODAYA SEVASHRAM TRUST - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR MK VAKHARIA for Petitioner(s) : 1,
MR. P.D.BHATE, ASSTT. GOVERNMENT PLEADER for Respondent(s) : 1,
None for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 09/09/2005

ORAL JUDGMENT

1.Leave to amend granted. Petitioner to carry out the same.

2.In this petition under Article 226 of the Constitution

of India, the petitioner-Trust has challenged the legality and validity of the order passed by the Joint Secretary (Appeals), Revenue Department, State of Gujarat dated 13.7.2005 passed in Revision Application No.44/2004 in dismissing the same and confirming the order passed by the Collector, Surendranagar dated 11.9.2004 in forfeiting the land to the State Government.

3. The land in question bearing Survey No.377 situated at village Adariyana, Taluka Dasada was granted to the Trust by the Collector, Surendranagar for agriculture purpose of the Trust itself and as the said land was to be cultivated by the Trust itself, was not required to be transferred without prior permission of the Collector. It appears from the record that it was found that the said land was in cultivation of Harijans Bodhabhai Ramabhai, Muliben Hirabhai and Nathabhai Ramabhai and was found that the same was in breach of the Grant by the Collector, Surendranagar, proceedings were initiated by the Collector, Surendranagar by issuing show-cause notice and the petitioner as well as the aforesaid three persons were called upon to show cause as to why the said land should not be forfeited

to the State Government for breach of condition of the Grant. The said proceedings came to be opposed by the petitioner and it was submitted that the said three persons who are alleged to be cultivating the land in question they are not transferred the land in question but they are hired for cultivation and there is no transfer by the petitioner-Trust at all. It was also submitted on behalf of the petitioner that in fact there was a manipulation in the records of rights in which the names of the three persons came to be entered into records of rights for which the proceedings came to be initiated and entry in favour of those three persons came to be set aside by the Mamlatdar, Patdi by his order dated 13.3.2003 and it was directed to mutate the name of the Trust in the revenue record. Considering reply submitted on behalf of the petitioner and having found that the aforesaid three persons are cultivating the land in question since many years i.e. 1968 onwards and even their names were also mutated in the records of right, the Collector, Surendranagar held that there is a breach of condition of Grant and therefore, by his order dated 11.9.2004 forfeited the land to the State Government. Being aggrieved and dissatisfied with the order passed by the Collector,

Surendranagar in forfeiting the land in question to the State Government, the petitioner preferred Revision Application before the State Government i.e. Secretary (Appeals), Revenue Department, State of Gujarat being Revision Application No.44/2004 and the Joint Secretary (Appeals), Revenue Department, State of Gujarat by his judgment and order dated 13.7.2005 dismissed the said Revision Application confirming the order passed by the Collector, Surendranagar forfeiting the land in question to the State Government. Being aggrieved and dissatisfied with the judgment and order passed by the Joint Secretary (Appeals), Revenue Department, State of Gujarat dated 13.7.2005 passed in Revision Application No.44/2004, the petitioner has preferred the present Special Civil Application under Article 226 of the Constitution of India.

4. Shri M.K.Vakharia, learned advocate appearing on behalf of the petitioner has submitted that as such there is no transfer by the Trust in favour of the aforesaid three persons who were cultivating the land in question and they were hired by the Trust. It is also further submitted that in fact there is a manipulation in the revenue record and the names of aforesaid three persons

were mutated in the records of rights however, subsequently, Mamlatdar, Patdi passed order dated 13.3.2003 in cancelling the names of those three persons from the revenue record and directing to mutate the name of the Trust in the revenue record. It is therefore, submitted that in view of the order passed by the Mamlatdar, Patdi the Collector, Surendranagar was not justified in holding that there is a breach of condition of Grant by transferring the land in favour of those three persons and consequently forfeiting the land to the State Government and therefore, it is requested to allow the present Special Civil Application.

5. It is not in dispute that the land in question was granted in favour of the Trust by the Collector, Surendranagar for an agriculture purpose and the same was a restricted land and the same was not required to be transferred without prior permission of the Collector. It is also not in dispute that the said agricultural land was required to be cultivated by the Trust itself and was not to be transferred. Both the authorities below came to the conclusion that the land in question was being cultivated by the aforesaid three

persons and that they are in possession of the land in question and even Civil Suits are also pending, filed by those three persons, to protect their possession which the petitioner was trying to disturb on the basis of the order passed by the Mamlatdar, Patdi dated 13.3.2003 by which Mamlatdar, Patdi passed an order to cancel names of those three persons from the revenue record and to enter the name of the petitioner-Trust in the revenue record. Much reliance has been placed upon the order passed by the Mamlatdar, Patdi dated 13.3.2003 passed in Panipatrak Case No. 3/2002. However, it appears from the record that the said order passed by the Mamlatdar, Patdi dated 13.3.2003 was challenged by those three persons before the Deputy Collector and thereafter before the Collector Surendranagar being Revision Application No. 52/2003 and it appears from the record and the order passed by the Joint Secretary (Appeals) Revenue Department, State of Gujarat that the Collector, Surendranagar has rightly passed order in Revision Application No. 52/2003 in quashing and setting aside the aforesaid two orders. It is required to be noted that the names of the aforesaid three persons are in the revenue record i.e. since 1967-68 and they are found to be in

possession of the land in question and cultivating the land in question which came to be challenged by the petitioner-Trust in the year, 2002-2003. On appreciation of evidence, the Collector, Surendranagar came to the conclusion that there is a breach of condition of Grant by which the land was alloted to the petitioner-Trust for their own cultivation but other persons are found to be in possession and cultivation of the land in question and therefore, the land is forfeited to the State Government and the said order is if confirmed by the Joint Secretary (Appeals), Revenue Department, State of Gujarat, it cannot be said that the same is in any way illegal, perverse or contrary to the evidence on record, which does not require to be quashed and set aside by this Court exercising powers under Article 226 of the Constitution of India.

6. For the reasons stated above, there is no substance in the present Special Civil Application and the same is required to be dismissed and is, accordingly, dismissed.

(M.R.SHAH, J.)

kdc.